

In The Matter of: )  
 )  
Creation Of A ) Docket No. MM 99-25  
Low Power Radio Service )

Among our other responses to the Commission’s Third Report & Order in Docket MM 99-25, we urged the FCC to proceed with *extreme caution* in any actions to adopt the Prometheus Radio Project proposal to allow use of “contour-based methodology” for Low Power FM (LPFM) stations. In return

for a greatly increased ability to find available frequencies, the LPFM stations would have to meet more demanding technical requirements. This contemplated “tradeoff” of new technical requirements would increase the cost of LPFM licenses, by requiring the hiring of consulting engineers, and also substantially increase the risk that an LPFM station’s license might be revoked.

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In light of the increased costs and -- more importantly -- the increased risks, Amherst urged the Commission to limit the new policy *exclusively* to LPFM stations which:

- (A) Demonstrate that the station cannot find an available frequency without using contour-based methodology;  
*And*
- (B) Demonstrate that station leaders are fully informed of, and knowingly accept, the increased costs and the much higher risk of license revocation.

In his subsequent electronic correspondence with The Amherst Alliance, Pete TriDish of Prometheus assured us that his organization has never intended the use of contour-based methodology to be anything other than fully voluntary and fully informed.

This news was a pleasant surprise to us.

We have three responses to this development:

1. We wish to place the Prometheus position, with its emphasis on fully voluntary and fully informed use of contour-based methodology, onto the public record in FCC Docket MM 99-25. Although we may have missed it, we are not currently aware of any official documents in this Docket which specify that Prometheus intends the use of contour-based methodology to be fully voluntary and fully informed. We ask the Commission to regard Amherst's Supplemental Written Comments as official placement of this information into the public record in FCC Docket MM 99-25.

Without quoting the entirety of the E-Mail Message that was sent to The Amherst Alliance by the Prometheus Radio Project, here is the most pertinent part of it:

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You should know that our positions are not so far off as you might think. Our proposal has always been that the LPFM has the option of using either the existing distance spacing or the contour method ...

If adopted, use of the contour method will be a supplement, not a replacement, for existing LPFM rules ...

[January 23, 2008 E-Mail Message from Pete TriDish of the Prometheus Radio Project to Don Schellhardt, Esquire of The Amherst Alliance.]

2. We are far from certain that the policy Prometheus has in mind is identical to the policy that the Commission is actually contemplating. In its

December 2007 Report & Order in Docket MM 99-25, the Commission asked for public comments on whether existing LPFM stations should be “grandfathered” from -- that is, exempted from -- the contemplated tradeoff of contouring methodology for higher risks and costs.

The Commission’s question set off alarm bells within the Amherst community.

Regulators do not need to exempt parties from policies which are voluntary. If the policies are truly voluntary, the parties who wish to be exempt from the policy will simply exempt themselves.

Therefore, despite the original intent of the Prometheus Radio Project, it appears to that the Commission may in fact be contemplating a uniform *mandatory* policy.

We cannot even assume that existing stations would be exempted. Why would the FCC ask whether they should be exempted if exempting them were a “given”?

If the Commission is in fact considering a uniform mandatory policy, with or

without “grandfathering” of existing LPFM stations, we urge the Commission -- in

the strongest possible terms -- to reconsider.

Those current and aspiring LPFM broadcasters who belong to Amherst are

deeply, *deeply* disturbed by the possibility that existing LPFM stations -- or even

“just” all new LPFM applicants -- might be forced to bear higher risks and costs that

they may not need ... do not want ... and may not be able to handle.

Most LPFM stations are still vulnerable institutions. *Please* treat them as such.

**3. Amherst still appears to differ with Prometheus on one important point.**

While the Prometheus Radio Project and The Amherst Alliance agree that use of the contour-based methodology, by an LPFM station, should be fully voluntary and fully informed, Amherst proposes to add a second requirement: a demonstration, by the new LPFM applicant or displaced LPFM licensee, that use of contouring is the *only* way to find an available frequency for the station involved.

Amherst emphasizes that the policy on which we agree with Prometheus -- that is, the need to keep the use of contouring *optional* for each LPFM station -- is a higher priority for our organization than the policy on which we appear to disagree with

Prometheus. Nevertheless, although it is a lesser priority, we continue to assert that the use of contour-based methodology should be demonstrably *necessary* -- in addition to being fully voluntary and fully informed.

Amherst takes this position for two primary reasons:

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- (A) Because an LPFM station is such a valuable community resource, station leaders should not be permitted to assume a sharply higher risk of license loss unless this is the *only* way for the LPFM station to get On Air;  
*And*
- (B) Because the use of contour-based methodology involves somewhat higher costs for an LPFM applicant, its use on a broad scale should be restrained -- in order to avoid building a systemic bias, toward applicants with greater “ability to pay”, into the license allocation process.

### Conclusion

For the reasons set forth herein, The Amherst Alliance urges the Federal Communications Commission to:

- (A) Be aware, and acknowledge on the public record in FCC Docket MM 99-25, that the Prometheus Radio Project has never intended the use of contour-based methodology, by LPFM stations, to be anything other than *fully voluntary* and *fully informed*;
- (B) Take action to assure that any future use of contour-based methodology, by LPFM stations, is indeed *fully voluntary* and *fully informed*;  
*And*
- (C) Take additional action that the use of contour-based

methodology, by LPFM stations, is also limited to cases in which LPFM stations demonstrate that they cannot find available frequencies without use of contouring methodology.

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Dated: January 27, 2008

I hereby certify that electronic copies of these Supplemental Written Comments have been sent to Pete TriDish, of the Prometheus Radio Project in Philadelphia, Pennsylvania, and Parul Desai, Esquire, of the Media Access Project in Washington, D.C.

Signed: Donald Joseph Schellhardt  
January 27, 2008

Dated:

